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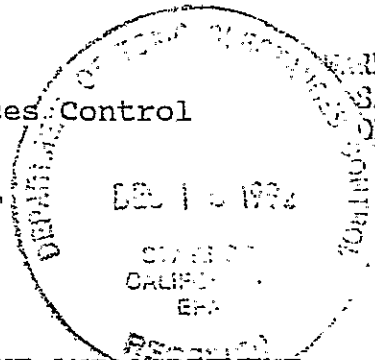
Recording Requested By:

DELTA STAR, INC.

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When Recorded, Mail To:

Department of Toxic Substances Control  
Site Mitigation Branch  
Region 2  
700 Heinz Avenue, Building F  
Berkeley, CA 94710



WARREN SLOCUM RECORDER  
SAN MATEO COUNTY  
OFFICIAL RECORDS

### COVENANT AND AGREEMENT

This Covenant and Agreement ("Covenant") is made as of the 23 day of September, 1992, by Delta Star, Inc., a Delaware corporation ("Covenantor"), who is the owner of record of certain property situated in Belmont, County of San Mateo, State of California, described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Toxic Substances Control, with reference to the following facts:

A. A portion of the Property described in Exhibit B, attached hereto, and incorporated herein by this reference, contains a hazardous substance.

#### B. Facts

##### 1. Contamination of the Property

The portion of the Property described in Exhibit B contains soil contaminated with Polychlorinated biphenyls (PCBs). The contaminated soil has been covered by a minimum of eighteen (18) inches of clean fill layer and a six (6) inch layer of concrete (hereinafter collectively called the "Cap").

## 2. Exposure Pathways

The contaminant addressed in this Covenant has been buried on the Property. Without mitigation measures, exposure can take place through dermal contact. If exposure pathways were not mitigated, potential human health effects resulting from exposure to PCBs are liver damage, skin pigmentation damage, and chloracne. PCBs are also suspected to be a human carcinogen. PCBs are known to bioaccumulate in human and animal tissues.

## 3. Surrounding Land Use and Population Potentially Affected

The land use in the vicinity of the Property varies and includes light to heavy industry and residential. Most of the area in the immediate vicinity of the Property is zoned industrial. The nearest residential area, Clearfield Park, is located within five hundred (500) feet of the southern boundary of the Property and consists of approximately 200 units. Nae Nesbit Primary School is located approximately five thousand (5,000) feet from the Northwest boundary of the Property.

C. Covenantor has made full and voluntary disclosure to the Department of the presence of hazardous substances on the Property, and the Covenantor has conducted extensive sampling of the Property.

D. Covenantor desires and intends that in order to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from PCBs which have been deposited on a portion of the Property as described in Exhibit B.

## ARTICLE I

### GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions") upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Health and Safety Code Section 25355.5 and run with the land pursuant to Health and Safety Code Section 25355.5. Each and all of Restrictions are for the benefit of and enforceable by the Department.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and

that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Property.

## ARTICLE II

### DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

## ARTICLE III

### DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property as described in Exhibit A as follows:

- a. Development of property for other than for industrial

use shall require written approval by the Department.

b. No residence for human habitation shall be permitted on the Property;

c. No hospitals shall be permitted on the Property;

d. No schools for persons under 18 years of age shall be permitted on the Property;

e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Property;

f. Any proposed alteration of the Cap shall require written approval by the Department;

g. The Property shall be posted with a bilingual sign in English and Spanish stating that no grading, excavation, or building activities can occur on the Cap or within ten (10) feet of the perimeter of the Cap without written permission of the Department;

h. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling of the Cap shall be managed in accordance with all applicable provisions of state and federal law;

i. All uses and development of the Property shall preserve the integrity of the Cap;

j. The Owner shall notify the Department of each of the following: (1) the type, cause, location and date of any disturbance to the Cap which could affect the ability of the Cap to contain the subsurface hazardous substances on the Property; and (2) the type and date of the repair of such disturbance.

Notification to the Department shall be made by registered mail within ten (10) working days of both the discovery of the Cap disturbance and the completion of the repairs; and

k. The Covenantor agrees that the Department shall have access to the Property for the purposes of inspection, surveillance, or monitoring as provided for in Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code.

3.02 Conveyance of Property. The Owner or Owners shall notify the Department within thirty (30) days of any sale, lease or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provide by law, by administrative order or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the restrictions, as set forth in paragraph 3.01 above, shall be grounds for the Department, by reason of this Covenant, to have the authority to require that the Owner or Occupants modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil or criminal actions against the Owner as provided by law.

3.04 Notice in Agreement. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property.

The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

#### ARTICLE IV

##### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code Section 25234.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V

##### MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public.

5.02 Notices. Whenever any person shall desire to give or serve any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"  
California Environmental Protection Agency  
Department of Toxic Substances Control  
Attention: Delta Project  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor, by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Owners in the County of San Mateo within ten (10) days of the date of execution.

5.06 References. All references to Code sections include successor provisions.



IN WITNESS WHEREOF, the parties execute this Covenant as of  
the date set forth above.

DELTA STAR, INC.

By: 

Christian N. Pany

Title: Vice President  
Delta Star, Inc.

Date:

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 

Title: Site Mitigation Branch Chief  
Region 2

Date: 9/23/92

STATE OF CALIFORNIA )

COUNTY OF SAN MATEO )

On SEPTEMBER 23, 1992, before me, the undersigned, a Notary Public in and for said state, personally appeared BARBARA COOK, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as SITE MITIGATION BRANCH CHIEF, REGION 2 of the Department of Toxic Substances Control, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.



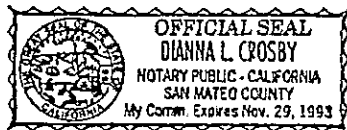
Nancy L. Lentsch  
Notary Public in and for said  
County and State

20470190

STATE OF CALIFORNIA       )  
                                  )  
COUNTY OF SAN MATEO       )

On October 5, 1992 1992, before me, the undersigned, a Notary Public in and for said state, personally appeared Christian N. Pany. personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice President of Delta Star, Inc., a Delaware corporation, on behalf of the corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.



Dianna L. Crosby  
Notary Public in and for said  
County and State

## EXHIBIT A

### Identification of the Property

The Property address is 1777 Industrial Way, Belmont, California, and is defined by the San Mateo Assessor's Office parcel numbers I, II, and III.

### Legal Description of the Property

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO, CITY OF UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

#### PARCEL I:

BEGINNING AT THE MOST EASTERLY CORNER OF THE LANDS DESCRIBED IN THE DEED FROM GEORGE WAGNER AND WIFE TO VACU-BLAST COMPANY, INC., DATED JANUARY 10, 1955 AND RECORDED APRIL 1, 1955 IN BOOK 2771 OF OFFICIAL RECORDS AT PAGE 171 (FILE NO. 39158-M), RECORDS OF SAN MATEO COUNTY, CALIFORNIA, SAID POINT BEARS AS FOLLOWS FROM A CONCRETE MONUMENT DESIGNATED AS P.M.C. 26, SET AT AN ANGLE POINT IN THE NORTHEASTERLY BOUNDARY LINE OF THE PULGAS RANCHO; NORTH  $0^{\circ} 08' 48''$  WEST 24.07 FEET AND NORTH  $48^{\circ} 00'$  EAST 237.00 FEET; THENCE FROM SAID POINT OF BEGINNING, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN THE ABOVE MENTIONED DEED AND ITS NORTHWESTERLY PROLONGATION, NORTH  $41^{\circ} 10' 24''$  WEST 579.03 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF THE LANDS DESCRIBED IN THE DEED FROM O. H. TAYLOR AND WIFE TO NIELSEN & BEAVER, A CO-PARTNERSHIP, DATED MAY 20, 1948 AND RECORDED MAY 25, 1948 IN BOOK 1534 OF OFFICIAL RECORDS AT PAGE 387 (FILE NO. 32992-H), RECORDS OF SAN MATEO COUNTY, CALIFORNIA; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY LINE, NORTH  $61^{\circ} 29' 12''$  EAST 143.08 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO L. H. PRICE, ET AL, RECORDED OCTOBER 31, 1955 IN BOOK 2905 OF OFFICIAL RECORDS AT PAGE 86, RECORDS OF SAN MATEO COUNTY, CALIFORNIA; THENCE ALONG THE NORTHWESTERLY BOUNDARY THEREOF AND ITS NORTHEASTERLY PROLONGATION, NORTH  $25^{\circ} 28' 24''$  EAST 304.36 FEET TO THE CENTER LINE OF INDUSTRIAL WAY (80 FEET WIDE); THENCE SOUTHEASTERLY, ALONG THE CENTER LINE OF INDUSTRIAL WAY, ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 580 FEET, THROUGH A CENTRAL ANGLE OF  $14^{\circ} 58' 52''$ , FOR AN ARC DISTANCE OF 151.65 FEET TO THE NORTHWESTERLY TERMINUS OF THE COURSE DISCRIBED AS "SOUTH  $42^{\circ} 00' 00''$  EAST 513.09 FEET" IN PARCEL I OF THE DEED TO PRICE PROPERTIES, INC., A PARTNERSHIP, RECORDED APRIL 3, 1962 IN BOOK 4178 OF OFFICIAL RECORDS AT PAGE 91, RECORDS OF SAN MATEO COUNTY, CALIFORNIA; THENCE CONTINUING ALONG SAID CENTER LINE OF INDUSTRIAL WAY, SOUTH  $42^{\circ} 00' 00''$  EAST 512.27 FEET TO THE MOST EASTERLY CORNER OF SAID LAST MENTIONED PARCEL; THENCE LEAVING SAID CENTER LINE OF INDUSTRIAL WAY, SOUTH  $48^{\circ} 00' 00''$  WEST 408.91 FEET TO THE POINT OF BEGINNING.

R9470130

*Howard G. Hickey, C.E.*

EXHIBIT B

P. O. Box 4202, Burlingame, CA 94011-4202, (415) 692-4482  
May 26, 1992

LEGAL DESCRIPTION  
PORTION OF ABANDONED PIT  
LANDS OF DELTA STAR, INC.  
1777 Industrial Way, Belmont, CA 94002

All that certain real property situate within the County of San Mateo, State of California more particularly described as follows:

Commencing at the most easterly corner of the land parcel shown on that certain Record of Survey filed in Book 6 of L. L. S. Maps at Page 38, on June 29, 1965 in the Office of the Recorder of San Mateo County, California, which point of commencing is also on the centerline of Industrial Road, as said Road is shown on the said Map; thence North  $42^{\circ}-00'$  West along said centerline of Industrial Road for a distance of 400.58 feet to a point; thence leaving said centerline of Industrial Road, South  $48^{\circ}-00'$  West for a distance of 90.10 feet to the Point of Beginning of the within described portion of abandoned pit; thence South  $47^{\circ}-10'$  West 15.25 feet; thence North  $42^{\circ}-50'$  West 15.00 feet; thence North  $47^{\circ}-10'$  East 15.25 feet; thence South  $42^{\circ}-50'$  East 15.00 feet to the Point of Beginning.



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